

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2138 of 1986

with

SPECIAL CIVIL APPLICATION No 4103 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ZARNABEN B TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2138 of 1986
MR PV HATHI for Petitioner
Ms Sejal Mandavia for the respondent
2. Special Civil ApplicationNo 4103 of 1992
MR BK PARIKH for Petitioner
Ms Sejal Mandavia for the respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/96

ORAL JUDGEMENT

Heard learned counsels for the parties. As both the special civil applications are filed by one petitioner and are concerning her grievance regarding promotion, the same are being disposed of by this common judgment.

2 The learned counsel for the petitioner, Mr P.V. Hathi, has brought on record the order dated 16th February 1991 passed by the Government of Gujarat under which the petitioner was ordered to be compulsorily retired under Rule 161 of the Bombay Civil Service Rules, 1959.

3 The petitioner entered in the government service as junior assistant on 1.1.1962 in the subordinate services on being selected by the Gujarat Public Service Commission. In 1975 the petitioner was not given promotion to the post of Section Officer. This denial of promotion to the petitioner has led her to file Special Civil Application No.1292 of 1976. This special civil application was allowed by this Court on 15.9.1977 and this Court has directed the respondents to consider afresh the case of the petitioner for notional promotion from 1975 in the light of the observations made therein. After the decision of this Court in the aforesaid special civil application the petitioner was given provisional promotion to the post of Section Officer vide notification dated 10.4.1978. This promotion was given to the petitioner with effect from 2.2.1976. The name of the petitioner was not included in the seniority list of Section Officers. The petitioner filed Special Civil Application No.2138 of 1986 before this Court against non-inclusion of her name in the seniority list of section officers and against non-consideration of her name for promotion to the post of Under Secretary. She prayed for promotion to the post of Under Secretary with effect from June 1986, the day on which her alleged junior, Shri P.J. Trivedi, was promoted. Respondents have filed the reply to the said writ petition and they have come up with the case that the petitioner was promoted on the post of Section Officer on the basis of provisional seniority list which was subject to her fitness. It had further been stated that the case of the petitioner was reviewed from time to time by the Departmental Promotion Committee to bring her name on Unconditional Promotional List of the Section Officers but her record of performance was not found suitable for

retaining her as Section Officer. Her case was reviewed upto May 1985. She has been ordered to be reverted to the post of Assistant under the order dated 14.7.1986 as she was not brought on unconditional promotional list. Her name was not included in the list of section officers, she has not been considered for promotion to the post of Under Secretary.

4 The order of reversion dated 14.7.1986 had been challenged by the petitioner by filing Special Civil Application No.4103 of 1986. When the petitioner was not found suitable to the post of Section Officer, I do not find any illegality in the action of the respondents in not including her name in the unconditional promotional list which was subject to the review by the Departmental Promotion Committee. Her service record was not satisfactory and as such on all occasions when her case was considered for unconditional promotion to the section officer she was found unsuitable. The respondents have acted very fairly and she was allowed to continue on the post of Section Officer on provisional basis and her case for unconditional promotion was reviewed for about 7 years but she was not found suitable. In view of these facts, the grievance of the petitioner regarding non-consideration of her case to the post of Under Secretary is of no substance. Her case could not have been considered for promotion as she was not unconditionally promoted on the post of Section Officer. The complaint of the petitioner that her junior was given promotion to the post of Under Secretary is also without merits as her juniors were promoted as Section Officer unconditionally and as such they have rightly been given promotion to next higher post.

5 The challenge to the order of reversion to the post of Assistant is also devoid of any substance. The service record of the petitioner was not satisfactory and after considering the same the Departmental Promotion Committee had found her not suitable for promotion. The petitioner was holding the post of Section Officer on provisional basis, as stated earlier. Her case was considered for promotion for 7 years but ultimately at the time when the Departmental Promotion Committee adjudged her unsuitable for promotion to the post of Section Officer the reversion order is made. This Court will not act as an appellate Court over the decision of the D.P.C. which is consisted of the experts. I do not find any illegality in the order dated 14.7.1986.

In the result, both these special civil applications failed and the same are dismissed. Rule is

discharged with no order as to costs.
